

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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2007 NOV -9 PM 12:14
U.S. DISTRICT COURT
DISTRICT OF MASS.

COTY PHELPS

PETITIONER

-v-

DAVID WINN, et.al.

RESPONDENTS

CASE: 05-40003-GAO
PETITIONER'S
OPPOSITION TO RESPONDENT'S
RULE 12(e) MOTION MADE ON

11-2-2007

DATE: 11-6-07

RESPONDENTS HAVE MOVED THIS COURT TO ALLOW THEM TO TAKE TWO BITES OF THE APPLE WHEN THE FEDERAL RULES OF CIVIL PROCEDURE ALLOW ONLY ONE. THEY HAVE MOVED THE COURT TO ISSUE AN ORDER TO THE PETITIONER FOR A MORE DEFINITE STATEMENT WITHOUT ATTACHING AN AFFIDAVIT SHOWING THAT SUCH IS NECESSARY AND WITHOUT IDENTIFYING ANY SPECIFIC CLARIFICATION. THEY MAKE A BOILERPLATE ALLEGATION THAT THE COMPLAINT IS TOO AMBIGUOUS AND VAGUE FOR THEM TO UNDERSTAND (RUBBER STAMPING THE TEXT OF THE RULE.)

1. ON 12-30-2004 PHELPS FILED A COMPLAINT BY GIVING IT TO A PRISON OFFICIAL AND IT WAS DOCKETED ON 1-5-05.
2. ON 1-30-2005 PHELPS AMENDED THE COMPLAINT BEFORE ANY RESPONDENT WAS SERVED.
3. ON 3-4-2005 SUMMONS WERE ISSUED BY THE COURT CLERK AND RESPONDENTS WERE SUBSEQUENTLY PROPERLY, AND TIMELY, SERVED AND TWO RESPONDENTS HAD UNTIL 5-5-2005 TO RESPOND.

4.. THE RESPONDENTS MADE AN UNTIMELY MOTION TO DISMISS ON 7-13-2005 AND MADE TWO AFFIRMATIVE DEFENSES: RULE 12(b)(1) LACK OF SUBJECT MATTER JURISDICTION, AND RULE 12(b)(6) FAILURE TO STATE A CLAIM.

5.. PHELPS FILED A TIMELY OPPOSITION TO THE MOTION TO DISMISS ON 7-25-2005

NOW THE GOVERNMENT COMES TO COURT ACTING AS IF NO PAST PROCEEDINGS OCCURRED AVOIDING THE "RAISE OR WAIVE" RULE AND SEEKS TO DELAY THE PROCEEDINGS, WHICH HAS BEEN IN COURT FOR THREE YEARS.

ON 9-27-2007 THE COURT DISMISSED RESPONDENT PARTIES BOLLINGER, DOLD, THOMPSON, HARVEY, FLITCHER, BLAZON, LEONARD, AND SONNEGA; AND PHELPS OBJECTED TO THEIR DISMISSAL.

ALTHOUGH POTOLICCHIO IS STILL A PARTY, HE IS NO LONGER AN EMPLOYEE AT PMC DEUGNS. BECAUSE HE ASSAULTED PHELPS (AND ADMITTED IT) HE WAS PLACED ON THE "TRANSFER OUT/RESIGNATIONS" LIST (SEE ATTACHMENT) THAT MEANS HE EITHER WAS FORCED TO RESIGN, OR WAS FORCED TO WORK AT ANOTHER FEDERAL AGENCY, OR HIS EMPLOYMENT WAS INJOLUNTARILY TERMINATED.

IRONICALLY, NEITHER DOLD, THOMPSON, HARVEY, FLITCHER, OR LEONARD ARE EMPLOYEES OF THE BOP.

AS TO THE GOVERNMENT'S MOTION FOR A MORE DEFINITE STATEMENT — THEY MUST HAVE A COPY ENTIRELY DIFFERENT FROM OINTERS. THE PAGES OF THE COMPLAINT ARE NUMBERED; THE COMPLAINT HAS HEADINGS AND SUB HEADINGS; BEGINNING AT PAGE 3, ALL PARAGRAPHS ARE NUMBERED; THE STATEMENT OF FACTS HAS NUMBERED SECTIONS; THE CAUSE OF ACTION

SECTION ARE SUB-TITLED; THE SUMMARY AND CONCLUSION ARE NUMBERED
SECTIONS; AND EVEN THE PRAYER FOR RELIEF ARE NUMBERED SECTIONS
AND SUB-SECTIONS.

A MOTION FOR A MORE DEFINITE STATEMENT SHOULD NOT BE GRANTED
WHEN THE COMPLAINT IS "SUFFICIENT" (TOWNSEND v BOSTON & M.R.R., D.MASS 1940,
35 F.Supp 938) AND EVEN IF THERE IS ONLY ONE SKELETAL PARAGRAPH THAT
IS SUFFICIENT, IT IS ENOUGH FOR THE DEFENDANTS TO RESPOND (COX v MAINE
MARITIME ACADEMY, D.Me 1988, 122 FRD 115.)

THE RESPONDENTS DID NOT MAKE AN AFFIDAVIT SHOWING A NEED FOR A
MORE DEFINITE STATEMENT AND WITHOUT AN AFFIDAVIT, THE COURT CAN ONLY
SPECULATE ON THE MATTER ASSERTED (BLACKWELL v LLOYD SMITH, D.C.N.Y 1938,
25 F.Supp 657.)

THE COMPLAINT WAS SUFFICIENT FOR THE RESPONDENTS TO MAKE AN
MOTION TO DISMISS ON 7-13-2005.

THE COMPLAINT WAS SUFFICIENT FOR THE COURT TO ISSUE AN ORDER
ON 9-27-2007 BASED UPON ITS READING.

THE RESPONDENTS MOTION FOR A MORE DEFINITE STATEMENT IS NOT
APPROPRIATE AND IS PRETEXTUAL FOR SOME ULTERIOR MOTIVE TO DELAY
THE PROCEEDINGS, AND THE MOTION SHOULD BE DENIED.

DATE: 11-06-07

Coy Phelps IN PRO SO
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TRANSFERS IN/NEW HIRES (SINCE 2/23/05)

AN D.	Sheryl Rochon	John Asare	Rafael Miranda
RT D.	Arun Verma	Jonathan Bone	Adrian Maxey
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M.	Lee Cook	Amy Taylor	Anthony Giambrocco
TINA A.	Tamar Rizk-Allan	Diana Ortiz	
L F.	Linda Lynde		

TRANSFERS OUT/RESIGNATIONS

M.	Pedro Roman	Concepcion Molina
D M.	Mitch Huffman	Diane Kilduff
ANN	Holly Brodeur	Helen Flagg
HELEN A.	Fazal Bhatti	Ryan Larson
R.	Mark Shangnessy	Heidi Larson
PH M.	<u>Bradley Potolicchio</u>	Richard Harsany
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M.	Brian Huntoon	Kristen Adam
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Y.	Linda Granados	Jeff Powers
A.	Patty Jenkinson	Cindy Ojeda
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	Joseph Allen	Jeroda Smith
	Toni Nichols	Linda Duby
MAR	Thomas Flaven	Marilyn Park
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J.	Scott Jenkinson	Russell Bloomfield
JRE ROBERT	Michael Cabral	Colleen Lavorato
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ICK R.		
D J.		
CK L.		
TOPHER C.		
CR A.		